IN THE HIGH COURT OF JUDICATURE AT BOMBY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 213 OF 2006

Vijay Ganpat Jadhav and Ors. .....Petitioners.

V/s

Navghar Manikpur Nagarparishad,
Vasai and Ors. .....Respondents.

Mr. R.D. Soni i/b M/s Ram & Co. for Petitioners.

Mr. A.G. Damle for Respondent Nos. 1 and 2.

Mr. S.R. Nargolkar, Assistant Government Pleader, for Respondent Nos. 4 to 6.

CORAM: **H.S. BEDI, C.J.,** &
V.M.KANADE, J.

DATE : **OCTOBER 18, 2006**

P.C.

1. The Petitioners were selected for the posts of sweepers etc and the Select List dated 17th November, 1997 being Exhibit "A" has been put on record. The Petitioners' grievance is that despite the fact that they had been selected, they were not appointed pursuant to this Select List. They, thereupon, alongwith several others filed Writ

Petition No.3532 of 1999 inter alia praying for a direction to Respondent Nos. 1 and 2 to issue appointment letters to those on the Select List. During the pendency of the Writ Petition, it had been pointed out that some of the contract labourers had filed a Complaint (ULP) No. 257 of 1999 before the Industrial Court at Thane and that some order has been made in those proceedings. This Court, accordingly, in its order dated 21st October, 1999 referred to above, recorded as under:-

> "However, it has come on record that the recruitment procedure was followed and select list is also prepared. Select List is not yet opened."

It is the grievance of the Petitioners that despite the fact that the Industrial Court has rendered its decision, leaving the way open for the Petitioners' appointments to the posts, the respondents declined to give them appointments, which has led the Petitioners into filing this Writ Petition.

2. In response to the notice issued in these proceedings, Shri N.D. Burade, Assistant Director, Directorate of Municipal Administration, Worli, Mumbai - 400 025, has filed an affidavit in reply and in para 5 therein it has been stated as under:-

> "5. I say that all Municipal Councils were asked to submit such detailed proposal in requisite proforma by this Office. I say that in spite of directions of this Hon'ble court passed on 21.10.1999 which directs Municipal Council "to open the select list within a period of four weeks from date of order and operate the same to the extent possible" the proposal to renew the lapse posts was received from Navghar Manikpur Municipal Council on 5.4.2002 & 11.8.2003 but the total necessary proposal required for the sanction of new staff pattern according to the said G.R dated 10.9.2001 was not received. The complete proposal was received by this office on date 13.2.2006 after

follow-up by this office."

3. It would be apparent from the above that the lapse has been committed by the Municipal Council as it had not forwarded the proposal in time and had the proposal been forwarded the petitioners would have been given the appointments as has been done in case of their counterparts in Writ Petition No.3532 of 1999. Concededly, except for the present three petitioners, all those persons who are covered by order dated 21st October, 2006 have been adjusted. Keeping in view this fact, the learned Counsel for the Petitioners on 4th October, 2006, made a statement before us that in view of the stand taken by the respondents that there were no vacancies against which the Petitioners could now be appointed, he was confining his prayer to seek an adjustment against the post which might fall vacant hereafter. We accordingly requested the learned Assistant Government Pleader for respondent Nos.4 to 6 to take instructions on this aspect. The learned Assistant Government Pleader informs us that despite having informed the State Government on the issue, no reply has been received by him.

4. We observe from the facts narrated above that all the Petitioners in Writ Petition No.3532 of 1999 had been adjusted and only the present three petitioners have been left out for reasons beyond their control and they cannot be made to suffer on account of any lapse or inaction on the part of the Municipal Council or the State Government. We are, therefore, of the opinion that the Petitioners also need to be adjusted in the manner suggested by the learned Counsel for the Petitioners on vacancies which may occur hereinafter, even if it means giving a relaxation in the age requirements.

5. The Petition is allowed accordingly.

CHIEF JUSTICE

V.M. KANADE, J.